

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
PAPPAMMAL WELLINGTON KURIAN)	FCC File Nos. 0002390995-0002390996,
)	0002390997-0002391015, 0002391018-
Petition for Reconsideration of Termination of)	0002391019, 0002391021-0002391026,
Licenses for Stations WNZV897, WPRJ710,)	0002391028-0002391032, 0002404771,
WPRJ822, WPSS730, WPTF350, WPTG203,)	0002404790, 0002442669, 0002544801
WPTI446, WPTM571, WPTN582, WPUE314,)	
WPUH219, WPUK749, WPUV444, WPUV507,)	
WPUV897, WPVI848, WPWK546, WPWR859,)	
WPXH414, WPUV229, WPXG547, WPUD819,)	
WPXM428, WPSV798, WPUW301, WPSE807,)	
WPXP537, WPUC846, WPVC703, WQCR857,)	
WPTE714, WPUV418, KNNK909, WXNX838,)	
WPRJ626, WQCI792, WPRM345)	

ORDER ON RECONSIDERATION

Adopted: October 18, 2007

Released: October 19, 2007

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a petition filed by Pappammal Wellington Kurian (Ms. Kurian) on March 14, 2007,¹ seeking reconsideration of a February 12, 2007 decision by the Mobility Division (Division) of the Wireless Telecommunications Bureau (Bureau).² The Division denied Ms. Kurian's request to defer processing of several license cancellation requests filed by Thomas K. Kurian (Mr. Kurian). For the reasons discussed below, we grant the petition for reconsideration in part, and deny it in part.

2. *Background.* Pursuant to Section 1.955(a)(2) and (3) of the Commission's Rules, wireless radio authorizations "automatically terminate, *without specific Commission action*, if" the licensee fails to meet applicable construction or coverage requirements³ or service is permanently discontinued.⁴ On

¹ Petition for Reconsideration (filed March 14, 2007) (Petition). On July 6, 2007, Mobile Relay Associates (MRA) filed a partial opposition to the Petition with respect to Station WPRM345, and requested leave to file the opposition out of time. *See* Partial Opposition to Petition for Reconsideration (filed July 6, 2007) (Opposition); Contingent Motion to Accept Late-Filed Opposition (filed July 6, 2007) (Contingent Motion). MRA states that it did not learn of the filing of the Petition, which was not served on MRA and of which no public notice was released by the Commission, until June 27, 2007, when the grant of an MRA application for a facility that would be incompatible with Station WPRM345, FCC File No. 0003028686, was conditioned on the outcome of the Petition. *See* Contingent Motion at 1-2. Under the circumstances presented, we grant the Contingent Motion, and accept the Opposition. Ms. Kurian filed a responsive pleading on August 13, 2007. *See* Pleading to Substantiate the Petition for Reconsideration (filed August 13, 2007) (Reply). On August 15, 2007, MRA moved to strike the Reply as untimely. *See* Motion to Strike, Contingent Motion for Leave to Respond, and Response (filed August 15, 2007). Replies are due seven days after the last day for filing the opposition. *See* 47 U.S.C. § 1.106(h). Ms. Kurian filed her Reply thirty-eight days after MRA filed its Opposition, and she offers no explanation for the delay. Consequently, we agree with MRA that the Reply should be dismissed as untimely.

² Letter dated February 12, 2007, from Scot Stone, Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, to George L. Lyon, Jr., counsel for Pappammal Wellington Kurian (*Division Letter*).

³ 47 C.F.R. § 1.955(a)(2) (emphasis added); *see also* 47 C.F.R. §§ 90.155(a), 101.63(c).

November 28, 2005, Mr. Kurian submitted cancellation requests with respect to thirty-nine licenses held in his name.⁵ On November 29, 2005, he informed the Bureau that he had requested these cancellations due to either a failure to construct or permanent discontinuance of station operations.⁶ On December 1, 2005, Ms. Kurian objected to the cancellation requests.⁷ She asserted that the licensed facilities in question were awarded to her pursuant to a court-approved property settlement following her divorce from Mr. Kurian, and that the cancellation requests were unauthorized and contrary to the court's order that Mr. Kurian cooperate in assigning the licenses to Ms. Kurian.⁸

3. On February 12, 2007, the Division denied Ms. Kurian's objection. It concluded that reliance on the representations of Mr. Kurian, the licensee of record, that the subject stations were not constructed or that service had permanently discontinued was appropriate, especially in the absence of any contrary evidence.⁹ Consequently, the Division concluded that, pursuant to Section 1.955(a), the licenses had cancelled automatically, so it granted the bulk of the cancellation requests.¹⁰ The Division rejected Ms. Kurian's argument that the cancellations requests were unauthorized and in violation of the Nevada court order, stating that "[t]he identity of the party notifying the Commission of the cancellation, and even the absence of any such notification, is not relevant to the question of whether the license has canceled."¹¹

4. *Discussion.* In his November 29, 2005 letter, Mr. Kurian stated that the submitted cancellation requests were due either to a failure to construct the authorized station or a permanent discontinuance of service.¹² He did not specify, and he was not obligated to do so, which cancellations requests were for which reason. Ms. Kurian asserts that while it normally would be appropriate to accept a licensee's representation that a station was not constructed or that service had permanently

(...continued from previous page)

⁴ 47 C.F.R. § 1.955(a)(3) (emphasis added); *see also* 47 C.F.R. §§ 90.157(a), 101.65(b).

⁵ *See* FCC File Nos. 0002390995, 0002390996, 0002390997, 0002390998, 0002390999, 0002391000, 0002391001, 0002391002, 0002391003, 0002391004, 0002391005, 0002391006, 0002391007, 0002391008, 0002391009, 0002391010, 0002391011, 0002391012, 0002391013, 0002391014, 0002391015, 0002391016, 0002391018, 0002391019, 0002391020, 0002391021, 0002391022, 0002391023, 0002391024, 0002391025, 0002391026, 0002391027, 0002391028, 0002391029, 0002391030, 0002391031, 0002391032, 0002391033, 0002391044.

⁶ *See* Letter dated November 29, 2005, from Thomas K. Kurian to Scot Stone, Esq., Public Safety and Critical Infrastructure Division (T. Kurian Letter). Pursuant to a reorganization effective September 25, 2006, certain duties of the Public Safety and Critical Infrastructure Division were assumed by the Mobility Division. *See* Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

⁷ *See* Letter dated December 1, 2005, from George L. Lyon, Jr., counsel for Pappammal Wellington Kurian, to Scot Stone, Esq., Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau.

⁸ *See id.* at 1.

⁹ *See Division Letter* at 2.

¹⁰ Mr. Kurian requested the withdrawal of two of the cancellation requests (FCC File Nos. 0002391020 [WPPY571] and 0002391033 [WQAY888]) on November 29, 2005, so the Division allowed them to be withdrawn. *See Division Letter* at 2 n.11. With respect to two cancellation requests that had been withdrawn by Ms. Kurian (FCC File Nos. 0002390995 [KNNK909] and 0002390996 [WNNX838]), the Division concluded that the licenses had canceled automatically, so it terminated the licenses. *See id.* at 3 n.14. With respect to three cancellation requests that were dismissed because the licenses had expired (FCC File Nos. 0002391016 [WQCI792], 0002391027 [WPRM345], and 0002391044 [WPRJ626]), the Division also concluded that the licenses had canceled automatically, but did not take any further action with respect to them other than to dismiss Ms. Kurian's late-filed renewal applications (FCC File Nos. 0002404771 [WPRJ626], 0002404790 [WPRM345], and 0002442669 [WQCI792]). *See id.*

¹¹ *Id.* at 3.

¹² *See* T. Kurian Letter at 2 (stating that cancellations had been submitted for "all non constructed and non operational stations").

discontinued, “[t]his is far from a normal situation,” and in light of the evidence of Mr. Kurian’s unlawful intent to dispose of marital property in violation of the court order, the Division should not credit Mr. Kurian’s statements.¹³ Except with respect to two stations discussed below, however, Ms. Kurian has not provided any evidence to refute Mr. Kurian’s representations that the stations were not constructed or, if they were, that service was permanently discontinued.¹⁴ Nor has Ms. Kurian cited any Commission precedent for declining to credit the unrefuted representation of the licensee of record because of outside litigation between the parties. We therefore conclude that the Division properly canceled most of the licenses at issue.

5. With respect to Station WPTE714, Ms. Kurian has submitted a declaration from an employee of Mr. Kurian, and other evidence, that the station was timely constructed, and never discontinued service.¹⁵ We conclude that Ms. Kurian provided sufficient evidence that this station was timely constructed and had not permanently discontinued service when Mr. Kurian filed the cancellation request. In addition, we take notice of the fact that the construction notification for Station WQCR857 indicates that the facilities were constructed less than one year prior to Mr. Kurian’s submission of the corresponding cancellation request, so it does not appear that the station could have been out of service long enough to be deemed permanently discontinued.¹⁶ Therefore, we will grant the petition for reconsideration with respect to these two stations.

6. *Conclusion and Ordering Clauses.* For the reasons stated above, we conclude that the Division properly canceled the bulk of the licenses at issue. Only with respect to Stations WQCR857 and WPTE714 do we grant the petition for reconsideration and reinstate the licenses.

7. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission’s Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Pappammal Wellington Kurian on March 17, 2007 is GRANTED IN PART AND DENIED IN PART, as set forth herein.

8. IT IS FURTHER ORDERED that the licenses for Stations WQCR857 and WPTE714 SHALL BE REINSTATED TO ACTIVE STATUS.

9. IT IS FURTHER ORDERED that the Contingent Motion to Accept Late-Filed Opposition filed by Mobile Relay Associates on July 6, 2007 IS GRANTED.

10. IT IS FURTHER ORDERED that the Motion to Strike, Contingent Motion for Leave to Respond, and Response filed by Mobile Relay Associates on July 6, 2007 IS GRANTED, and the

¹³ Petition at 2-3.

¹⁴ While the Petition states that “the vast majority” of the stations at issue were operational at the time Mr. Kurian filed the cancellation requests, it does not substantiate that assertion. *See id.* at 3. Unsupported statements of counsel do not suffice to refute evidence in the record. *See, e.g.,* Offshore Telephone Co. v. South Central Bell Telephone Co., *Memorandum Opinion and Order*, 2 FCC Rcd 4546, 4554 ¶ 41 (CCB 1987).

¹⁵ *See* Petition, Exhibits F-H. Pursuant to Section 1.106(c) of the Commission’s Rules, a petition for reconsideration that relies on facts not previously presented to the designated authority cannot be granted unless the new information was not available earlier or the public interest requires consideration of the new information. 47 C.F.R. § 1.106(c). We conclude that consideration of the new facts regarding the veracity of the information submitted to the Commission by Mr. Kurian is in the public interest. *See, e.g.,* KM Radio of St. Johns, L.L.C., *Memorandum Opinion and Order and Notice of Apparent Liability*, 19 FCC Rcd 5847, 5848 ¶ 2 (2004); City of San Diego, *Order on Reconsideration*, 17 FCC Rcd 20331, 20334 ¶ 6 (WTB PSPWD 2002).

¹⁶ *See* 47 C.F.R. § 101.65(b) (a station is considered permanently discontinued if it “has not operated for one year or more”).

Pleading to Substantiate the Petition for Reconsideration filed August 13, 2007 by Pappammal Wellington Kurian IS DISMISSED.

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATION COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau